

46 Am. Jur. 2d Judges § 202

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Judges

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IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 202. Express and implied waiver of right to disqualify judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  53

A.L.R. Library

[Waiver or loss of right to disqualify judge by participation in proceedings—modern state criminal cases, 27 A.L.R.4th 597](#)

[Waiver or loss of right to disqualify judge by participation in proceedings—modern state civil cases, 24 A.L.R.4th 870](#)

[Time for asserting disqualification of judge, and waiver of disqualification, 73 A.L.R.2d 1238](#)

Generally, waiver of the disqualification of a judge need not be made expressly;¹ however, where a statute requires all parties and counsel to sign an agreement waiving the issue of disqualification, a party does not waive the issue where a written waiver is not executed, regardless of whether the party's attorney was aware of the issue, as counsel's knowledge cannot be imputed to the party.²

Waiver may be implied from a party's actions or inactions, such as—

— failure to object or move for disqualification.³

— withdrawal of a disqualification motion.⁴

— failure to follow the requisite procedures for recusal.⁵

— participating in the proceedings.⁶

— acquiescing in or requesting the judge to act in a judicial capacity under certain circumstances.⁷

Whether a party's actions or inaction constitutes a waiver depends on the circumstances of each case.⁸

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Footnotes

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|---|---|
| 1 | People v. Jones, 206 Ill. App. 3d 477, 151 Ill. Dec. 489, 564 N.E.2d 944 (2d Dist. 1990); <i>Survance v. State</i> , 465 N.E.2d 1076 (Ind. 1984). |
| 2 | <i>Abell v. Oliver</i> , 117 S.W.3d 661 (Ky. Ct. App. 2003). |
| 3 | § 203. |
| 4 | § 204. |
| 5 | § 205. |
| 6 | § 207. |
| 7 | § 206. |
| 8 | <i>Ryals v. Pigott</i> , 580 So. 2d 1140 (Miss. 1990). |

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